

230819

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-550X

R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.
--ABANDONMENT EXEMPTION--
IN LEHIGH COUNTY, PENNSYLVANIA

ENTERED
Office of Proceedings

AUG 15 2011

Part of
Public Record

PETITION TO VACATE
NOTICE OF INTERIM TRAIL USE

Ronald A. Lane
Audrey L. Brodrick
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832
(312) 252-1500

**ATTORNEYS FOR R.J. CORMAN RAILROAD
COMPANY/ALLENTOWN LINES, INC.**

Dated: August 15, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-550X

**R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.
--ABANDONMENT EXEMPTION--
IN LEHIGH COUNTY, PENNSYLVANIA**

**PETITION TO VACATE
NOTICE OF INTERIM TRAIL USE**

Pursuant to 49 C.F.R. § 1152.29(d)(2), R.J. Corman Railroad Company/Allentown Lines, Inc. ("RJC�") hereby petitions the Board to vacate the portion of its October 5, 1998 decision issuing RJC� a Notice of Interim Trail Use ("NITU"), and authorizing RJC� to enter into an interim trail use/rail banking agreement for an approximate 2 mile line of railroad known as the "Barber's Quarry Industrial Track." (Board's October 5, 1998 decision issuing NITU, Docket AB - 550X, attached hereto as Exhibit 1). Pursuant to the Board's October 5, 1998 decision, the City of Allentown ("City") and RJC� entered into an interim trail use agreement whereby the City was permitted to use a portion of the Barber's Quarry Industrial Track located between milepost 93.25 and approximately 95.089 on an interim basis as a recreational trail. RJC� now seeks to vacate the portion of the Board's 1998 Order issuing a NITU as RJC� intends to restore rail service to the line of railroad previously subject to interim trail use.

HISTORY

In 1998, RJC� filed a notice of exemption under 49 CFR 1154 Subpart F to abandon a 1.945 mile line of railroad known as the Barber's Quarry Industrial Track between milepost 93.144 in the vicinity of Union and 3rd Streets in Allentown, and milepost 95.089 in the vicinity of Lawrence Street and Lehigh Parkway in the township of Salisbury, Lehigh County, Pennsylvania. Notice of the exemption was served and published in the Federal Register on September 8, 1998. On September 14, 1998, the County of Lehigh, Pennsylvania, filed a request for issuance of a NITU for the entire portion of line that RJC� sought to abandon. RJC� agreed to negotiate an agreement for interim trail use. As a result, on October 5, 1998, the Board issued its decision and granted a NITU, allowing the parties to negotiate an agreement within a 180-day period, and, if no agreement was reached within the prescribed time period, authorizing RJC� to fully abandon the line.

After the Board granted the parties several extensions to the NITU negotiating period, RJC� and the City of Allentown entered into an agreement for interim trail use. On July 16, 2004, RJC� informed the Board that RJC� had transferred all but a small portion of the line of railroad subject to the NITU to the City of Allentown for interim trail use purposes. (Letter from RJC� to Board dated July 16, 2004 attached hereto as Exhibit 2). Specifically, in its agreement with the City of Allentown, RJC� transferred the portion of the Barber's Quarry Industrial Track between approximately milepost 93.25 and approximately milepost 95.089 to the City of Allentown for interim trail use purposes. RJC� retained the remaining portion of the Barber's Quarry Industrial Track between approximately milepost 93.25 and approximately 93.14 and abandoned that portion of rail line consistent with the environmental conditions the

Board ordered in its October 5, 1998 decision. (Notice of Consummation attached hereto as Exhibit 3).

RESTORATION OF RAIL SERVICE

Recently, a demand for rail service has developed on the Barber's Quarry Industrial Track on the portion of track that is currently being used as a trail by the City of Allentown. RJCN and the Allentown Economic Development Corporation ("AEDC") wish to re-establish rail service on the portion of rail line transferred to the City of Allentown for interim trail use purposes. RJCN and AEDC have executed a Letter of Intent for reactivating rail service on this portion of the Barber's Quarry Industrial Track, including the re-construction of the connection to RJCN's existing and operational main-line. The parties anticipate they will be able to reach binding agreements for reactivation of the line in 60 days and request the Board vacate the NITU effective 30 days thereafter.

WHEREFORE, R.J. Corman Railroad Company/Allentown Lines, Inc. requests that the Board issue an order, effective November 15, 2011, vacating the NITU it issued in its October 5, 1998 Order with respect to the portion of track that RJCN transferred to the City of Allentown for interim trail use between milepost 93.25 and approximately milepost 95.089 on the Barber's Quarry Industrial Track in Lehigh County, Pennsylvania.

Respectfully Submitted,

By: Audrey L. Brodrick
Ronald A. Lane
Audrey L. Brodrick
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500 Telephone

**ATTORNEYS FOR R.J. CORMAN RAILROAD
COMPANY/ALLENTOWN LINES, INC.**

Dated: August 15, 2011

29611
DO

SERVICE DATE - OCTOBER 7, 1998

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-550X

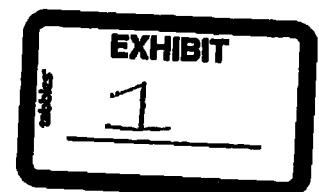
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.--
ABANDONMENT EXEMPTION--IN LEHIGH COUNTY, PA

Decided: October 5, 1998

R.J. Corman Railroad Company/Allentown Lines, Inc. (RJCN) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 1.945-mile line of railroad known as the Barber's Quarry Industrial Track between milepost 93.144 in the vicinity of Union and 3rd Streets in Allentown and milepost 95.089 in the vicinity of Lawrence Street and Lehigh Parkway in the township of Salisbury, Lehigh County, PA. Notice of the exemption was served and published in the Federal Register on September 8, 1998 (63 FR 47546-47). The exemption is scheduled to become effective on October 8, 1998.

The Board's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA), served September 18, 1998. In the EA, SEA indicates that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment. NGS states that it must be notified 90 days in advance of any activities that would disturb or destroy these markers. Therefore, SEA recommends that a condition be imposed requiring RJCN to consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

SEA also indicates that the right-of-way may be suitable for other public use following abandonment. By petition filed September 14, 1998, the County of Lehigh, PA (County) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition so that it could negotiate with RJCN for acquisition of the right-of-way for use as a recreational trail. The County requests that RJCN be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that RJCN be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. The County states that it needs the full 180-day period to review title information, complete a trail plan, and commence negotiations with RJCN. The County submitted a statement indicating its willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of taxes for the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future



reactivation for rail service.¹ By letter filed September 24, 1998, RJCN indicated its willingness to negotiate with the County for interim trail use and public use for a period of 90 days.

The County's request complies with the requirements of 49 CFR 1152.29 and RJCN is willing to negotiate. Therefore, a NITU will be issued. The parties may negotiate an agreement during the 90-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 90 days, RJCN may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). The County has satisfied these requirements and, therefore, a 90-day public use condition will be imposed commencing with the effective date of the exemption.²

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, RJCN must keep the remaining right-of-way intact for the remainder of the 90-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, RJCN is not required to deal exclusively with the County, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

¹ By letter filed September 23, 1998, the County requests that the time period sought for the public use condition be reduced to 90 days instead of 180 days as originally requested.

² Because section 10905 permits a maximum of 180 days from the effective date of the exemption for a public use condition, should a resolution not be reached through negotiations within the 90-day period, the County may request an extension of up to 90 additional days for the public use condition.

2. Upon reconsideration, the notice of exemption served and published in the Federal Register on September 8, 1998, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the conditions that RJCN shall: (a) consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers; and (b) keep intact the right-of-way underlying the track, including bridges, trestles, culverts and tunnels (but not track or track materials), for a period of 90 days from the October 8, 1998 effective date (until January 6, 1999), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before the expiration of the 180-day period specified above, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If any agreement for interim trail use/rail banking is reached by January 6, 1999, interim trail use may be implemented. If no agreement is reached by that time, RJCN may fully abandon the line.

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

Kirkpatrick & Lockhart LLP

1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
202.778.9100 Fax
www.kl.com

July 16, 2004

Edward J. Fishman
202.778.9468
Fax: 202.778.9100
efishman@kl.com

Via Electronic Mail

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street N.W.
Washington, DC 20423

Re: **Docket No. AB-550X**
R.J. Corman Railroad Company/Allentown Lines, Inc.
- Abandonment Exemption -
In Lehigh County, Pennsylvania

Dear Secretary Williams:

By this letter, we are notifying the Board that R.J. Corman Railroad Company/Allentown Lines, Inc. ("RJCN") transferred all but a small portion of the line of railroad subject to the Notice of Interim Trail Use ("NITU") in the above-referenced abandonment proceeding to the City of Allentown ("City") for interim trail use purposes. Specifically, RJCN transferred the portion of the Barber's Quarry Industrial Track between approximately milepost 93.25 and approximately milepost 95.089 to the City. RJCN has retained a small portion of the Barber's Quarry Industrial Track between approximately milepost 93.25 and approximately milepost 93.14. RJCN intends to satisfy the remaining environmental condition and consummate the abandonment of this small portion in the near future.

Respectfully submitted,



Edward J. Fishman
Counsel for R.J. Corman Railroad Company/
Allentown Lines, Inc.

EXHIBIT

2

DC-844431 v1 0306339-0101

BOSTON ■ DALLAS ■ HARRISBURG ■ LOS ANGELES ■ MIAMI ■ NEWARK ■ NEW YORK ■ PITTSBURGH ■ SAN FRANCISCO ■ WASHINGTON

Kirkpatrick & Lockhart LLP

1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
www.kl.com

September 17, 2004

Edward J. Fishman
202.778.9456
Fax: 202.778.9100
efishman@kl.com

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W., Room 700
Washington, DC 20423-0001

Re: Docket No. AB-550X
R.J. Corman Railroad Company/Allentown Lines, Inc. –Abandonment
Exemption – In Lehigh County, PA

Dear Secretary Williams:

The R.J. Corman Railroad Company/Allentown Lines, Inc. hereby encloses for filing in this proceeding the attached **Notice of Consummation**.

If you have any questions about this filing, please feel free to contact me.

Respectfully submitted,



Edward J. Fishman
Counsel for R.J. Corman Railroad Company/
Allentown Lines, Inc.

Enclosure



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-550X

R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.
-- ABANDONMENT EXEMPTION --
IN LEHIGH COUNTY, PENNSYLVANIA

NOTICE OF CONSUMMATION

Edward J. Fishman
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue - 2nd Floor
Washington, DC 20036
(202) 778-9000

**ATTORNEYS FOR R.J. CORMAN
RAILROAD COMPANY/ALLENTOWN
LINES, INC.**

Dated: September 17, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-550X

**R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.
-- ABANDONMENT EXEMPTION --
IN LEHIGH COUNTY, PENNSYLVANIA**

NOTICE OF CONSUMMATION

R.J. Corman Railroad Company/Allentown Lines, Inc. ("RJCN") hereby notifies the Surface Transportation Board ("Board"), as required under 49 C.F.R. § 1152.29(e)(2), that it has exercised its authority to abandon the portion of the Barber's Quarry Industrial Track between approximately milepost 93.25 and approximately milepost 93.14 (the "Subject Track").

By notice of exemption that became effective on October 8, 1998, RJCN filed for abandonment of the Barber's Quarry Industrial Track between approximately milepost 93.14 and approximately milepost 95.089. The Barber's Quarry Industrial Track included the Subject Track that is covered by this notice. By decision served on October 7, 1998, the Board required RJCN to consult with the National Geodetic Survey ("NGS") prior to exercising its abandonment authority.

By letter dated July 16, 2004, RJCN informed the Board that it had transferred the portion of the Barber's Quarry Industrial Track between approximately milepost 93.25 and approximately milepost 95.089 to the City of Allentown for interim trail use purposes pursuant to a Notice of Interim Trail Use ("NITU") issued by the Board. In that letter, RJCN also informed the Board that it would satisfy the remaining environmental condition and consummate

the abandonment of the remaining portion owned by RJC� (the Subject Track) in the near future.

RJC� has completed its consultation with NGS, as confirmed by the letter that is attached hereto as Exhibit A. As a result of its consultation with NGS, RJC� has satisfied all of the conditions imposed by the Board in its October 7, 1998 decision. RJC� is hereby notifying the Board that it is consummating the abandonment of the Subject Track. RJC� has discontinued operations, canceled tariffs and intends that the Subject Track be removed from the interstate rail network. RJC� certifies that a copy of this Notice of Consummation has been sent to the Pennsylvania Public Utilities Commission, as shown on the attached Certificate of Service.

Respectfully submitted,

By: 

Edward J. Fishman

Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue - 2nd Floor
Washington, DC 20036
(202) 778-9000

**ATTORNEYS FOR
R.J. CORMAN RAILROAD COMPANY/
ALLENTOWN LINES, INC.**

Dated: September 17, 2004

Kirkpatrick & Lockhart LLP

EXHIBIT A

1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
www.kl.com

July 21, 2004

Via Facsimile (301) 713-4324

Mr. Frank Maida
National Oceanic and Atmospheric Administration
N/NGS2
Room 8736
1315 East-West Highway
Silver Spring, MD 20910-3282

Edward J. Fishman
202.778.9456
Fax: 202.778.9100
efishman@kl.com

**Re: STB Docket No. AB-550X
R.J. Corman Railroad Company/Allentown Lines, Inc.
– Abandonment Exemption –
In Lehigh County, Pennsylvania**

Dear Mr. Maida:

I am writing to confirm that in my capacity as counsel for R.J. Corman Railroad Company/Allentown Lines, Inc. ("RJC�") I consulted by telephone with you earlier today about the environmental condition imposed by the Surface Transportation Board in connection with the abandonment of the portion of the Barber's Quarry Industrial Track between approximately milepost 93.25 and approximately milepost 93.14 in Lehigh County, Pennsylvania. Although RJC� does not anticipate engaging in activities that would disturb or destroy the two (2) geodetic station markers that may be affected by the proposed abandonment, RJC� agrees to provide the National Geodetic Survey with ninety (90) days' notice prior to disturbing or destroying any such markers.

Respectfully submitted,



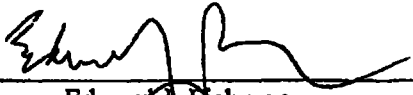
Edward J. Fishman
Counsel for R.J. Corman Railroad Company/
Allentown Lines, Inc.

DC-654119 v1 0306339-0101

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2004, a copy of the foregoing Notice of
Consummation was served by first class mail, postage prepaid, on the following:

Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17120


Edward J. Fishman